

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAY BRYAN MACOY,

Defendant and Appellant.

B209449

(Los Angeles County
Super. Ct. No. BA315610)

APPEAL from an order of the Superior Court of Los Angeles County, Robert Perry, Judge. Dismissed.

Lynette Moore, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback, II and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

On May 20, 2007, defendant, Ray Bryan Macoy, pled no contest to the crime of voluntary manslaughter and admitted the truth of a special allegation. His post-plea motion to reduce his sentence was denied. We noted defendant has failed to secure a probable cause certificate. We have a duty to raise issues concerning our jurisdiction on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) As a result, we issued an order to show cause concerning possible dismissal of the appeal and permitted the parties to orally argue the dismissal issue.

Defendant has failed to fully and timely comply with both Penal Code section 1237.5 and California Rules of Court, rule 8.304(b). (*In re Chavez* (2003) 30 Cal.4th 643, 651; *People v. Mendez* (1999) 19 Cal.4th 1084, 1099; *People v. Way* (2003) 113 Cal.App.4th 733, 736.) Without a probable cause certificate, defendant cannot appeal. (*People v. Kaanehe* (1977) 19 Cal.3d 1, 8; *People v. Ribero* (1971) 4 Cal.3d 55, 61; *People v. West* (1970) 3 Cal.3d 595, 600-601; *People v. Ward* (1967) 66 Cal.2d 571, 574-576.) There is no merit to defendant's argument the probable cause certificate is inapplicable because he was induced to plead no contest because of deceptive prosecutorial tactics or the performance of counsel was deficient because no motion to withdraw the plea was filed. Because defendant is challenging the plea bargain itself with the stipulated to 16 year term, these issues may only be raised on appeal if a probable cause certificate has been secured. (*People v. McNight* (1985) 171 Cal.App.3d 620, 624-625; see *People v. Panizzon* (1996) 13 Cal.4th 68, 77.) Further, defendant's post plea motion challenged the very sentence which was agreed to at the time he plead no contest. The challenge in the post plea motion was to the stipulated to 16-year sentence, which is to the terms of the plea bargain, and a probable cause certificate is required if that issue is to be litigated on appeal. (*People v. Panizzon, supra*, 13 Cal.4th at pp. 76-78; see *People v. Cuevas* (2008) 44 Cal.4th 374, 381-382.)

The appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.